

## **COMPLAINT 2009 – NO. 5**

In Re Kohl-Welles

### **DETERMINATION OF NO REASONABLE CAUSE – ORDER OF DISMISSAL**

#### **I. NATURE OF THE COMPLAINT**

The complaint alleges that Senator Kohl-Welles (Respondent) and “others unknown” violated the Ethics in Public Service Act (Act) through participation in an event held in a Senate committee room on October 1, 2009. The complaint was received by the Board after the October meeting and the Board did not meet until December. The progress and results of the investigation were discussed at the December and January regular board meetings.

Mr. Rick Steves is a travel advisor based in Seattle. He conducts tours throughout the world and has written about those experiences. The complaint alleges: (1) public resources were used to promote his business (RCW 42.52.070 – grant of special privileges); (2) acceptance of his book by legislators was an improper gift because it could reasonably be expected to improperly influence the legislators (RCW 42.52.140 – reasonable expectation); and (3) Respondent used public resources for private gain or benefit (RCW 42.52.160)

The Board has both personal and subject-matter jurisdiction.

#### **II. CONCLUSION**

Based upon a review of the complaint and the Board’s investigation, the Board concludes there is no reasonable cause to believe that the Act has been violated.

#### **III. INVESTIGATION**

The investigation included interviews with Respondent, legislative staff who assisted with coordinating the event, some of the staff and legislators who attended, and an employee of the ACLU – Washington who helped facilitate the appearance and presentation by Steves. In addition, information was obtained through the offices of senate administration relative to the public costs involved, and the Office of Senate Counsel which had informally opined on the ethical considerations associated with the Respondent’s and the Senate’s support of the event. Further, the book in question was reviewed, as was a video of the presentation by Steves which was provided by Senate Production Services.

#### **IV. DETERMINATIONS OF FACT**

Based upon the information obtained from these various sources, there is reasonable cause to believe that the facts of the case are as follows.

On or about July 13, 2009 Steves was invited by Respondent to come to Olympia to address legislators. The invitation was relayed through ACLU personnel who had, and were, working with Steves on issues of mutual concern. The invitation was accepted and the coordination of the event, including timing and content, involved the ACLU and legislative staff over approximately the next two months.

Legislative staff contacted Senate Counsel for advice on two questions: (1) Was there an ethical problem with having Steves appear at the Senate for a lunch presentation and (2) could posters be produced at public expense informing people of his appearance and presentation? Counsel advised that the proposal was a legislative event and that the posters could be produced.

Senate administration approved the production of fifty posters advertising the event. Total cost was \$50.00 and this was charged to the printing and production budgets of Respondent and Senator Kline. Senator Kline and his Legislative Assistant were involved in supporting the event. The posters were placed at various sites on the legislative campus. The Complainant had originally claimed this was done in violation of the policies of the Department of General Administration but subsequently dropped this allegation while stating he had been informed by the Department that this was not the case. The Complainant initially raised the issue of legislators receiving lunch at the event at public expense but dropped this allegation when he learned that public resources were not used to pay for the meals. The ACLU paid for the lunches and had a staff presence at the event.

During the lunch hour on October 1, during the Legislature's Committee Assembly Weekend, Mr. Steves gave his presentation in Senate Hearing Rooms ABC. The fifty-five minute presentation included his oral remarks accompanied by a power point presentation of some of his travels. The power point and his remarks may be characterized as an abridged version of his latest book. A copy of this book – "Travel As A Political Act" – was given by Steves to all attendees who requested one. The retail price is noted on the book as \$16.95.

The presentation was advertised as a discussion on how traveling expands the traveler's worldview. The poster reads, in part, that (Steves) will "...lead a discussion on how the knowledge gained from traveling can assist us to create effective public policies on a wide range of issues, from marijuana to health care." The poster also stated that he would preview his new book.

Steves sold no books at this event and did not request or ask people to sign up for any tours he was offering. In the words of one attendee, Steves seemed to "studiously avoid" promotion of his book or his business. Others in attendance noted that he made his views known on issues such as health care and marijuana laws but that the event was as advertised – experiencing

other cultures can open our eyes to solving issues. The DVD of the event supports these observations.

Health care and marijuana issues have historically and are currently being debated in the Legislature. At the time of this event a number of bills on both subjects had been introduced in the Legislature and Respondent was a sponsor of some of these bills. Steves and Respondent appear to be in agreement on some of the issues surrounding the debate on marijuana use and penalties associated therewith. Steves stressed, throughout his presentation, that Americans should not assume they have all the answers and that experiencing other cultures, through travel for instance, would most likely expose the traveler to alternative ways to address problems common among nations.

The legislative process involves debate and discussion and the Legislature has historically invited speakers to address legislators and staff. Sometimes this occurs in the context of a committee hearing on a bill and other times it takes place in some other, legislative venue. The Senate, for instance, has instituted and supported a Brown Bag Speaker Series which features presenters on any number of topics. Committee rooms are provided for these events and they are advertised and supported with the use of public resources such as staff and posters. Some speakers are private businesspersons and their accompanying biographical sketch notes that fact. For example, this Speaker Series sponsored a consultant and private businessperson who spoke on motivation and effective communication, skills commonly viewed as important for effective job performance.

On occasion senators may request to “sponsor” a speaker on a particular topic. Senate administration may authorize the use of public facilities and staff after concluding there is a sufficient legislative purpose to the event. This preview often involves ethics advice from the Senate Counsels who are designated ethics advisers. This is the process that was followed in the case before us.

## **V. DETERMINATIONS OF LAW**

1. The first allegation concerns RCW 42.52.070 which prohibits a legislator from using her or his legislative position to secure special privileges for self, family or others except in cases where that position is used to perform duties within the scope of legislative employment. It is alleged that Steves was the recipient of special privileges in violation of this prohibition. There are no facts or reasonable inferences therefrom that the invitation was for his benefit or that the presentation was designed or directed to be promotional. On the contrary, the presentation was on behalf of the attendees and the subject matter was directed at assisting legislators appreciate the value of studying other cultures when discussing issues of public policy.
2. The second allegation concerns RCW 42.52.140 which prohibits the acceptance of any thing of economic value as a gift, gratuity or favor “...if it could *reasonably* be expected

that the gift, gratuity, or favor would influence the vote, action or judgment (of the legislator)... or be considered as part of a reward for action or inaction” (emphasis added). There are no facts or reasonable inferences therefrom that establish reasonable cause to believe that acceptance by legislators of the \$16.95 book violated this section of the Act.

There are two reasons to support this determination. The first is that RCW 42.52.150 (2) – gifts, contains a list of items of value which are presumed not to improperly influence under the provisions of .140 and which may be accepted without regard to the general \$50.00 gift limit. These include:

...

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

...

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer’s or employee’s agency;

(e) Informational material, publications, or subscriptions related to the recipients performance of official duties;

...

The book in question is of the type of gift described in these exemptions and (e) may well be directly applicable. The facts establish that the book was unsolicited, of nominal value, was offered for review, was informational in nature and was related to the recipients’ performance of their legislative duties. There is no evidence that any of the legislators had a personal beneficial interest in the Senate’s eventual use or acquisition of the book.

The second reason is that .140, also referred to as the “quid pro quo” statute, requires conduct which offers or appears to offer something specific in exchange for something specific (Complaint Opinions 1999-1 and 2 and 2002-1). “The offer of a vote on a specific bill in exchange for money is an obvious example of the quid pro quo prohibition” (Senate Ethics Board Complaint 1975-1 and Complaint Opinion 1995-4). The facts do not support a determination that it would be reasonable to conclude that the book was given pursuant to an arrangement for a vote, for instance, or that the book was a reward for legislative action or inaction.

Since RCW 42.52.150 permits the receipt of most gifts under \$50 and includes presumptions that gifts of the type at issue in this case may be received which are valued in excess of \$50, and the book is not reasonably viewed as part of a quid pro quo arrangement prohibited by RCW 42.52.140, the receipt of the book did not violate the Act.

3. The final allegation is that RCW 42.52.160 has been violated. This statute prohibits the use of public resources for the private gain or benefit of self or others unless those resources are used to benefit others as part of a legislator's official duties. Our conclusion in Determinations of Law (1), that reasonable cause does not exist to show that public resources were used for the personal gain or benefit of Steves, addresses one-half of the allegation. The question remaining is whether reasonable cause exists to believe that Respondent improperly used public resources for her own private benefit or gain. We conclude the answer is "no." In her role as a legislator the Respondent arranged for a presentation for the benefit of legislators which was designed to inform those legislators of the value in experiencing and examining other cultures when, as policy makers, they are called upon to address important issues.

## **VI. ORDER**

There is no reasonable cause to believe the actions complained of constitute a violation of Act. Therefore, the Complaint is dismissed.

Dated this 2<sup>nd</sup> day of February, 2010.

David R. Draper, Chair

Senator Honeyford has approved the following statement:

I agree the facts related to the allegations considered by the Board fail to establish reasonable cause to believe the Act was violated. However, in my view the complaint broadly alleges that the receipt of lunches was improper and that was sufficient for the Board to consider whether there was a solicitation for those lunches. I feel the Board missed an opportunity to remind legislators and staff of the prohibition on soliciting anything of value from lobbyists or lobbyist-employers.